

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DENISE A. WAGNER,)	CASE NO. 5:19-cv-2631
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	MEMORANDUM OPINION AND
)	ORDER
COMMISSIONER OF SOCIAL)	
SECURITY,)	
)	
DEFENDANT.)	

Before the Court is the report and recommendation of Magistrate Judge Kathleen Burke, recommending that the decision of the defendant Commissioner of Social Security (“Commissioner”) denying the applications of plaintiff Denise Wagner (“Wagner”) for supplemental security income (“SSI”) and Disability Insurance Benefits (“DIB”) be reversed and remanded for further proceedings. (*See* Doc. No. 18 (Report and Recommendation [“R&R”]) at 3087.¹) The Commissioner’s response to the R&R states that he will not be filing objections to the R&R. (Doc. No. 19.)

Under the relevant statute:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C).

¹ References to page numbers are to the page identification numbers generated by the Court’s electronic filing system.

The failure to file written objections to the report and recommendation of a magistrate judge constitutes a waiver of a de novo determination by the district court of an issue covered in the report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The Commissioner states that he will not object to the R&R. (Doc. No. 19.)

The Court has reviewed Magistrate Judge Burke's report finding that the Administrative Law Judge ("ALJ") "failed to explain how his RFC [Residual Functional Capacity] determination took into account the marked limitations assessed in the opinion of Wagner's therapist, licensed social worker Ms. Janis, and the RFC is inconsistent with at least one of those limitations, despite the ALJ's assertion that he had taken those limitations into account[.]" and recommending that the "Commissioner's decision be reversed and remanded for further proceedings consistent with this opinion" and to reassess the opinion of Ms. Kleppel, an evaluating physical therapist. (R&R at 3087 (emphasis removed).)

The Court accepts and adopts Magistrate Judge Burke's report and recommendation. Accordingly, the final decision of the Commissioner is reversed and remanded for further proceedings consistent with this Memorandum Opinion and Order.

IT IS SO ORDERED.

Dated: October 6, 2020



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE